ADAPT TO ADVANCE

IP in the future business landscape
The IP attorney as a critical business asset
Jan Huyghen van Linschoten
ADAPT TO ADVANCE

How do we become a critical business asset?
Our Goal

Being that critical business resource
5 trends defining our future

• Global Rise in Filings
• Ascendancy of IP as an Asset
• Changing Definition & Demographics
• Enforceability
• Government Involvement
5 trends defining our future

- Rise in filings
- Ascendancy of IP as an Asset
- Changing Definition & Demographics
- Enforceability
- Government interest
OPPORTUNITIES
RISE IN FILINGS
In my career

Source: US Patent and Trademark Office
Global trends

Source: WIPO’s World Intellectual Property Indicators Report for 2014
RISE OF IP AS AN ASSET

From dusty corner right into the boardroom
Esoteric legal right to strategic asset

Source: Ocean Tomo
The activist shareholder

• Feb 24, 2012, Starboard wrote to the Board:
  • AOL owned extremely valuable patents that [were] underutilized
  • Starboard believed the portfolio could produce $1+ billion if appropriately monetized
  • AOL’s inaction … was alarming … the Company’s most valuable patents would expire worthless

• Apr 9, 2012, AOL sold patents to Microsoft for $1.056 billion
And their stock price?

Source: Jim Malackowski, Ocean Tomo
Dutch Sandwich saves Google billions in taxes
Internet giant uses complex tax structure to keep tax rate at 2.4%

Article at Bloomberg/NBC: http://www.nbcnews.com/id/39784907/ns/business-us_business/t/dutch-sandwich-saves-google-billions-taxes/#.VQiR7E3cnTc

See http://en.wikipedia.org/wiki/Double_Irish_arrangement for a description of the technique
No longer the purview of the ‘Geek in the Corner’
STRENGTHS
WE EAT PATENTS FOR BREAKFAST
WEAKNESSES
Blinded by the Light
THREATS
DEFINITION OF IP
Definition of IP has changed…

...But we still talk about patents all the time
RISE IN FILINGS

And the curse of large numbers
## Commoditization

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CUPERTINO, Calif. (AP) — Apple Inc. (AAPL) on Tuesday reported fiscal first-quarter net income of $18.02 billion.

The Cupertino, California-based company said it had profit of $3.06 per share.

The results surpassed Wall Street expectations. The average estimate of analysts surveyed by Zacks Investment Research was for earnings of $2.60 per share.

The maker of iPhones, iPads and other products posted revenue of $74.6 billion in the period, also exceeding Street forecasts. Analysts expected $67.38 billion, according to Zacks.

For the current quarter ending in March, Apple said it expects revenue in the range of $52 billion to $55 billion. Analysts surveyed by Zacks had expected revenue of $53.65 billion.

Apple shares have declined 1 percent since the beginning of the year, while the Standard & Poor's 500 index has declined slightly more than 1 percent. In the final minutes of trading on Tuesday, shares hit $109.14, an increase of 39 percent in the last 12 months.
WILL CREATORS OF COMMODITIZED PRODUCTS BE IN THE BOARDROOM?
CHANGE IN DEMOGRAPHICS

How relevant are we?
Kodak Worth More in Breakup With $3 Billion Patents: Real M&A

Dutch Sandwich saves Google billions in taxes
Internet giant uses complex tax structure to keep tax rate at 2.4%

Article at Bloomberg/NBC: http://www.nbcnews.com/id/39784907/ns/business-us_business/dutch-sandwich-saves-google-billions-taxes-VGIr7E3mTC
See http://en.wikipedia.org/wiki/Double_Irish_arrangement for a description of the technique
Challenge: the ‘traditional’ IP professional’ is not equipped to deal with this

WILL WE REMAIN IN THE DUSTY CORNER WHILE OTHERS EAT OUR LUNCH?
Rise of the Non-IP IP-professional

Each year, Intellectual Asset Management (IAM) researchers in the United States, Europe and Asia speak to a wide range of senior corporate IP managers, as well as third-party IP service providers, in order to identify these IP leaders. Only those individuals nominated multiple times by different parties as outstanding IP strategists are listed in the IAM Strategy 300.
FALL OF ENFORCEABILITY
US Patent Litigations

Source: https://lexmachina.com/wp-content/uploads/2015/02/Fig-4-Defendant-case-pairs-quarters.png
Growth of IP Boutiques in 2015

- Kenyon & Kenyon: -19.6%
- Brinks Gilson & Lione: -15.6%
- Fitzpatrick Cella: -15.3%
- Finnegan Henderson: -9.4%
- Harness Dickey: -4.6%
- Cantor Colburn: -4%
- Fish & Richardson: -3.4%
- Kilpatrick Townsend: -0.5%

- Sterne Kessler: 2.4%
- Banner & Witcoff: 3.3%
- Oblon Spivak: 4.1%
- Merchant & Gould: 4.8%
- Knobbe Martens: 5.4%
- Schwegman Lundberg: 11.3%
- Novak Druce: 30%

Percentage change in number of attorneys from 2014 to 2015

RISE IN GOVERNMENT INTEREST
Government involvement

- Politicians
  - “With our current patent laws being abused in ways that are threatening the survival of American innovation, the Congress must act to curb abusive patent litigation.”

- Lobbying
  - “The $130 million “anti-troll coalition” has the financial power to have a major say in the reform debate…something that is confirmed by a quick calculation of how many lobbying dollars the coalition’s players spent last year.”

Troll Bill Threatens To Weaken All Patents, GCs Say

Law360, New York (March 27, 2015) -- In-house counsel for IBM Corp., United Technologies Corp. Aerospace Systems, Juniper Networks Inc. and others said at a conference Friday that they are worried that a bill in Congress aimed at thwarting so-called patent trolls will actually weaken all patents and hurt their business.

Good and bad...

Challenge of regulation by the good intentioned politician...
TODAY’S CHALLENGE
Law360 Reveals Largest IP Boutiques

“...while IP specialty firms bring an army of top talent to the legal market, experts say they still need to define their mission and adapt to a changing market to keep up with general practice firms...”

By Aaron Vehling, March 22, 2015
How do we get back up the curve?

Value per project vs. # discrete projects
THANK YOU